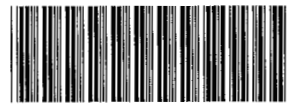


# INTERVENTION

**BOEHM, KURTZ & LOWRY**  
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2003 JUL 22 P 12:58

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Via Overnight Mail

July 21, 2003

Arizona Corporation Commission  
Attn: Docket Filing Window  
1200 Washington Street  
Phoenix, AZ 85007

Arizona Corporation Commission  
**DOCKETED**

JUL 22 2003

**Re:    *Petition to Intervene of the Kroger Company***  
***Docket No. E-03145A-03-0437***

DOCKETED BY	<i>AK</i>
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Dear Sir or Madam:

Please find enclosed the original and thirteen (13) copies of the Application of Kroger Co. for Leave to Intervene in the above-referenced matter.

Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.  
**BOEHM, KURTZ & LOWRY**

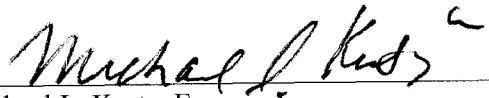
MLKkev  
Attachments

**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by regular U.S. mail (unless otherwise noted), this 21<sup>st</sup> day of July, 2003.

Alan G. Erickson, Esq.  
AFCEFA/ULT  
139 Bond Drive, Suite  
Tyndall Air Force Base, Florida 32403-5319

Arizona For Electric Choice in Competition  
C. Webb, Crockett, Esq.  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012

  
\_\_\_\_\_  
Michael L. Kurtz, Esq.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	<b>:</b>
<b>ARIZONA PUBLIC SERVICE COMPANY FOR</b>	<b>: DOCKET NO. E-01345A-03-0437</b>
<b>A HEARING TO DETERMINE THE FAIR</b>	<b>:</b>
<b>VALUE OF THE UTILITY PROPERTY OF THE</b>	<b>:</b>
<b>COMPANY FOR RATEMAKING PURPOSES,</b>	<b>:</b>
<b>TO FIX A JUST AND REASONABLE RATE OF</b>	<b>:</b>
<b>RETURN THEREON, TO APPROVE RATE</b>	<b>:</b>
<b>SCHEDULES DESIGNED TO DEVELOP SUCH</b>	<b>:</b>
<b>RETURN, AND FOR APPROVAL OF</b>	<b>:</b>
<b>PURCHASED POWER CONTRACT</b>	<b>:</b>

**PETITION TO INTERVENE OF KROGER CO.**

The Kroger Co. ("Petitioner") hereby petitions the Arizona Corporation Commission ("Commission") for leave to intervene and participate in the proceeding concerning the application of the Arizona Public Service Company ("Applicant"). In support of its Petition it states as follows:

**1. Name and Addresses of Petitioner:**

The Kroger Co.  
1014 Vine Street, G-07  
Cincinnati, Ohio 45202  
Telephone: 513-762-4538 Facsimile: 513-762-4012  
E-mail: [dgeorge@kroger.com](mailto:dgeorge@kroger.com)

**2. Name and Address of Attorney Representing Petitioner:**

Michael L. Kurtz, Esq.  
**BOEHM, KURTZ & LOWRY**  
36 East Seventh Street, Suite 2110  
Cincinnati, Ohio 45202  
Telephone: 513-421-2255 Facsimile: 513-421-2764  
E-mail: [mkurtzlaw@aol.com](mailto:mkurtzlaw@aol.com)

J. William Moore, Esq. of Phoenix, Arizona has agreed to serve as local counsel to Kroger for the purpose of filing a pro hac vice motion seeking permission to have Mr. Kurtz participate in this case. Mr. Kurtz is an out-of-state attorney licensed in Ohio, Kentucky and Pennsylvania.

**3. Identify the Petitioner:**

Petitioner is a retail electric customer of the Arizona Public Service Company ("Company"). Petitioner has approximately 36 grocery stores and other facilities that purchase their electric supply from the Company.

**4. Petitioner's Interest in this Proceeding:**

Kroger is a corporation engaged in the business of selling groceries at retail throughout the United States. One of the largest retail food companies in the United States, Kroger operates approximately 36 grocery stores in the state of Arizona that purchase their electric supply from the Company. These stores purchase more than 100 million kWh of electricity from the Company annually. Petitioner is one of the largest commercial customers served by the Company. The grocery stores operated by Kroger are high load factor facilities that use energy for food storage, lighting, heating, cooling and distribution, often on a 24 hour a day, 7 day a week basis. If the Company's application is granted, then the cost for electric power service to Petitioner could be substantially impacted. Accordingly, Petitioner has a substantial and vital interest in the outcome of this proceeding which cannot be adequately represented by any other party.

**3. Issues To Be Raised:**

The primary issue the Petitioner intends to address in this case will be whether the rate increase sought by the Applicant is reasonable and cost justified. We also intend to address whether the proposed allocation of the rate increase and the design of the new rates are just and reasonable.

**WHEREFORE**, for the reasons set forth above, Petitioner requests that this Petition to Intervene be granted.

DATED this 21 day of July, 2003.

A handwritten signature in black ink, appearing to read "Michael L. Kurtz", is written over a horizontal line.

Michael L. Kurtz, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 2110  
Cincinnati, Ohio 45202  
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e-mail: [mkurtzlaw@aol.com](mailto:mkurtzlaw@aol.com)